

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ePLUS INC.,)	
)	
Plaintiff,)	Civil Action No. 3:09-CV-620 (REP)
)	
v.)	
)	
LAWSON SOFTWARE, INC.,)	
)	
)	
)	
Defendant.)	

**PLAINTIFF ePLUS INC'S OBJECTIONS AND REVISED SUMMARY OF
THE DEPOSITION OF KENNETH WHITE (OCTOBER 26, 2009)**

Plaintiff, *ePlus*, Inc. ("ePlus"), through counsel, hereby offers the following revised summary of the deposition of Kenneth White (October 26, 2009):

Revised Summary

At the time of his October 26, 2009 deposition, Kenneth White was the revenue recognition manager at Lawson. (31:7-22)

Mr. White was designated to testify as Lawson's Rule 30(b)(6) corporate representative with respect to topics 2, 5 and 8 from *ePlus*'s 1st Rule 30(b)(6) deposition notice. These topics concern Lawson's costs, revenues, and profits for Lawson's electronic sourcing and procurement systems and services. (14:17-15:16; 16:15-17:15; 18:3-14)

Mr. White and his team at Lawson gathered information responsive to these topics by pulling revenues for SKUs (Stock Keeping Units) which are used by Lawson to identify products. (16:3-9) This revenue information was tracked by Lawson fiscal year and by Lawson customer. Information was pulled going back to fiscal year 2005. (21:19-22:8) Lawson does not have information prior to that time other than what is in Lawson's customer files. (22:9-22; 23:14-19; 24:1-3; 24:7-12; 24:14-16) Lawson's fiscal year runs from June 1 to May 31. (50:16-17)

Lawson maintains a list of every SKU it tracks and for each SKU it has a SKU description. (139:5-10) Each SKU corresponds to an actual software product. (139:11-22) In certain

instances, a SKU will include multiple component products. (223:14-224:7) In these instances, Lawson tracks revenue information only for the overall product, not for each of the components of that product. *Id.*

License revenue is product revenue. (52:22-53:13) Maintenance revenue is support revenue that Lawson receives on an annual basis. (53:16-20) Service revenue is earned for consulting, training, implementation, installation and software as a service – a hosting service that Lawson provides to its customers. (53:21-54:217) The implementation services are generally sold along with a license for the software. (33:21-34:5) The services revenue also includes gold and platinum service packages that include application management and application outsourcing and annual fees for the Punchout Partner Program.¹ (157:9-158:12) The maintenance and service revenue Lawson earns is generated in supporting Lawson's own software. (59:3-16)

With respect to license and maintenance revenue, Mr. White's team was provided with a list of SKUs by Jordan Ekelin at Lawson and instructed to pull revenue information for those SKUs. (37:18-39:3) Mr. White explained that to run all of Lawson's revenues for all of its SKUs would be ominous and, as ePlus's counsel agreed, it is a lot of data. (155:15-156:13) License and maintenance revenue is tracked and can be pulled on a product-by-product basis. (51:21-52:5) Services revenue is not associated to a particular product. (52:6-21; 181:22-182:4; 223:11-13)

With respect to service revenue, Mr. White determined that the appropriate way to determine the applicable services revenue that matched up with the accused licensed software would be to pull the services revenue limited to the particular customers who had licensed the accused software. (178:2-180:4; 182:5-8) Mr. White also limited the services revenue included in the services revenue spreadsheet for each customer who had licensed the accused software to the 12 month period after the customer had licensed the accused software. (178:18-22)

Mr. White's team compiled a license revenue spreadsheet (L0135750), a maintenance revenue spreadsheet (L0157226) and a services revenue spreadsheet (L0258430). (16:3-9; 21:19-22:8; 61:13-16; 62:8-13; 65:1-10; 146:20-147:4) The license revenue spreadsheet includes license revenue for the IC, PO, RQ and SIP SKUs. (72:6-16) The license revenue spreadsheet did not include license revenue for the PROC SKU, a SKU that references the Lawson Procurement Suite. (210:1-211:14) The maintenance revenue spreadsheet includes revenue for 11 SKUs. (166:3-167:7) Mr. White explained that to determine what should be included in e-procurement, he would want to know which SKUs to include. (45:4-12) Mr. White did not know whether these spreadsheets omitted SKUs that relate to Lawson's procurement software. (166:3-167:7)

As for maintenance revenue, Lawson requires that any customer who purchases software must also purchase at least one year of maintenance for that software. (153:2-9) About 93 percent of Lawson's customers will renew their maintenance contracts after one year. (153:10-154:2) The different levels of maintenance offered for Lawson software are silver and bronze maintenance

¹ Lawson contends that "maintenance revenue" should be changed to "service revenue." ePlus objects that this mischaracterizes the witness's testimony. Lawson also contends that the reference to annual fees for the Punchout Partner Program should be removed. ePlus objects that this, too, mischaracterizes the witness's testimony.

packages. (156:16:157:2) Bronze maintenance packages are typically priced on an annual basis at 18 to 20 percent of the software sold. (159:4-13; 196:11-21) Silver maintenance packages are typically priced on an annual basis at 20 to 22 percent of the software sold, but can cost as much as 24 percent of the software. (160:5-161:5; 197:11-19)

Mr. White testified that when a Lawson sales representative sells software, the sales representative will use the Lawson pricing configurator (L0234993) to determine which SKU(s) correspond to the product sold. (36:4-37:2; 26:18-27:1) Mr. White testified that he does not know how the pricing configurator works. (188:12-18) Mr. White testified that a licensing specialist will insert the SKU(s) on a purchase order form and will double-check the pricing configurator to make sure it has all relevant SKUs, including any SKUs that must be sold with the product purchased that pricing configurator, make sure it has all the SKUs, all the interdependencies, if there's any other SKUs that need to be purchased.² (36:4-37:2)

In fiscal year 2009, Lawson earned \$109 million in worldwide license revenue, \$350 million in worldwide maintenance revenue, and \$297 million in worldwide consulting revenue. (58:12-20; 55:14-56; 56:12-14)

² Lawson contends that this statement should be re-written to state "that pricing configurator, make sure it has all the SKUs, all the interdependencies, if there's any other SKUs that need to be purchased." *ePlus* objects that Lawson's summary is misleading and does not as accurately reflect the meaning conveyed by the witness's testimony.

Respectfully submitted,

/s/

Craig T. Merritt (VSB #20281)
Henry I. Willett, III (VSB #44655)
CHRISTIAN & BARTON, LLP
909 East Main Street, Suite 1200
Richmond, Virginia 23219-3095
Telephone: (804) 697-4100
cmerritt@cblaw.com
hwillett@cblaw.com

Scott L. Robertson (admitted *pro hac vice*)
Jennifer A. Albert (admitted *pro hac vice*)
David M. Young (VSB#35997)
GOODWIN PROCTER LLP
901 New York Avenue, N.W.
Washington, DC 20001
Telephone: (202) 346-4000
SRobertson@goodwinprocter.com
JAlbert@goodwinprocter.com
DYoung@goodwinprocter.com

Michael G. Strapp (admitted *pro hac vice*)
James D. Clements (admitted *pro hac vice*)
GOODWIN PROCTER LLP
Exchange Place
53 State Street
Boston, MA 02109-2881
Telephone: (617) 570-1000
MSrapp@goodwinprocter.com
JClements@Goodwinprocter.com

Attorneys for Plaintiff, ePlus Inc.

Dated: August 11, 2010

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August, 2010, I will electronically file the foregoing

**PLAINTIFF ePLUS INC'S OBJECTIONS AND REVISED SUMMARY OF
THE DEPOSITION OF KENNETH WHITE (OCTOBER 26, 2009)**

with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) via email to the following:

Daniel McDonald, *pro hac vice*
William D. Schultz, *pro hac vice*
Rachel C. Hughey, *pro hac vice*
Joshua P. Graham, *pro hac vice*
Andrew Lagatta, *pro hac vice*
Merchant & Gould P.C.
3200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 332-5300
Facsimile: (612) 332-9081
lawsonscrvicc@merchantgould.com

Robert A. Angle (VSB# 37691)
Dabney J. Carr, IV (VSB #28679)
Troutman Sanders LLP
P.O. Box 1122
Richmond, VA 23218-1122
Telephone: (804) 697-1238
Facsimile: (804) 698-5119
robert.angle@troutmansanders.com
dabney.carr@troutmansanders.com

Counsel for Defendant Lawson Software, Inc.

/s/
David M. Young (VSB #35997)
GOODWIN PROCTER LLP
901 New York Avenue, N.W.
Washington, DC 20001
Telephone: (202) 346-4000
Facsimile: (202) 346-4444
dyoung@goodwinprocter.com